VIJENDRAN PONNIAH

v.

BANK OF COMMERCE

HIGH COURT MALAYA, KUALA LUMPUR
JAMES FOONG J
[SUIT NO: S5-23-15-1996]
31 JULY 1998

CIVIL PROCEDURE: *Action - Malicious institution of bankruptcy - Bankruptcy proceedings commenced by defendant - Whether terminated in favour of plaintiff - Whether bankruptcy process was litigated upon - Whether there was an application to set aside the bankruptcy notice - Whether a petition for bankruptcy was taken out*

CIVIL PROCEDURE: *Action - Abuse of civil process - Civil action and bankruptcy proceedings taken by defendant for recovery of loan granted to plaintiff - Whether there was some other purpose than to obtain genuine redress which the process offered - Whether defendant retaliated by filing action upon complaint by plaintiff - Whether there was a settlement to pay by instalments by plaintiff - Whether naming of seven newspapers for substituted service was an extortion - Whether defendant embarrassed plaintiff with service of bankruptcy notice - Whether defendant breached stay orders upon renewal and service of bankruptcy notice*

The plaintiff, a customer of the defendant had enjoyed a clean overdraft facility of up to RM20,000 on his personal account. When the defendant insisted that the plaintiff should apply for a secured loan to this account, he was angered by this request and forwarded to the defendant an application form for such a loan without much particulars. The defendant rejected this and recalled the clean overdraft facility.

After a demand made on the plaintiff for RM19,865.42 was not met, the defendant filed a civil action in the magistrate court and obtained a judgment in default of defence ('default judgment') against the plaintiff. The plaintiff applied to set aside the default judgment but that was dismissed by the magistrate court and subsequently by the High Court on appeal.

The defendant commenced bankruptcy proceedings against the plaintiff by securing a bankruptcy notice ('BN'). Unable to serve the BN personally on the plaintiff, the defendant, in a letter of appointment to the plaintiff, named seven national newspapers for substituted service, in the event the terms of the letter were not complied with. The plaintiff's application to the Sessions

Court to set aside the BN was dismissed and instead the plaintiff obtained an *ex parte* order for stay of execution on the default judgment. Whilst this interim order was in force, the defendant renewed the validity of the BN which had expired.

The plaintiff then obtained a stay of execution order on the condition that the plaintiff pay into court the sum of RM21,374.70. The plaintiff paid the said sum into court but did not inform the defendant of this. Meanwhile, the defendant had served the BN on the plaintiff. The defendant, with leave of the court, withdrew the said sum paid in by the plaintiff and proceeded no further with the bankruptcy proceedings.

In this instance, the plaintiff claimed that he had suffered damages and based his actions on malicious prosecution and an abuse of the process of the court. The plaintiff alleged that there was some collateral purpose to damage his reputation and alleged that: (1) the defendant chose to ignore the fact that there was a settlement to pay the amount due in instalments; (2) the defendant threatened him by the naming of the seven newspapers; (3) the defendant's process server embarrassed him upon service of the BN; (4) the bankruptcy proceedings commenced were meant to defeat the plaintiff's application to set aside the default judgment; and (5) the defendant breached the order of stay when it renewed the validity of the BN.

Held:

[1] From the facts, there was no criminal charge ever set in motion and this was required for an action under malicious prosecution. As such, the plaintiff's action should be based on malicious institution of bankruptcy. The essential element for determination in this cause of action was whether the bankruptcy proceedings had terminated in favour of the plaintiff.

[1a] If there was any termination in favour of the plaintiff, the bankruptcy process must be litigated upon, which in the circumstances of this case, should be during an application to set aside the BN, or if ever a petition for bankruptcy was filed, the dismissal thereof. None of these ever happened. As such, the plaintiff failed to satisfy the first element to succeed in an action for malicious bankruptcy.

[2] There was no merits in the plaintiff's assertion that the defendant's manager was angry with him over his complaint of the withdrawal of his overdraft facility, and therefore retaliated by filing the action against him. The defendant had every right to institute legal action to recover

payment of the loan upon failure of repayment. Their action was a genuine redress which the process offered. There was no other purpose behind this.

[3] The plaintiff did not pay any of the instalments allegedly agreed upon. The plaintiff only responded when the defendants wrote a letter of demand for the judgment sum pursuant to the default judgment. When this sum was paid, there was also no mention of the settlement and that the amount tendered was in payment thereof. As such, there was no indication of any prior settlement having been reached.

[4] The naming of seven newspapers by the defendant for the considered substituted service was not an extortion. The number of newspapers is immaterial but the right to advertise in a daily is permissible by law. This could not be considered as a purpose to compel the plaintiff to settle the judgment sum lawfully due to the defendant under the default judgment.

[5] The plaintiff's allegation that the conduct of the defendant's process server to embarrass him could have been easily avoided if the plaintiff had accepted service personally. Though the plaintiff insisted that he was not avoiding service, the events recorded by documentary evidence spoke otherwise. Further, the process server had a right to carry out his job by visiting the office of the plaintiff to ascertain whether the plaintiff was there to receive the BN. This was not unlawful and could not be considered as an implication of the existence of some other purpose other than that legally designed for.

[6] A judgment sum stands as a good judgment until set aside. When a judgment sum is not paid, then execution can be enforced. This can take the form of a bankruptcy proceeding. Therefore, there was no sinister reason behind the approach taken by the defendant to commence the bankruptcy proceedings.

[7] Although there was a breach of the interim stay order granted when the defendant renewed the validity of the BN, this was not done with the purpose other than to obtain a genuine redress which the process offered. The redress was the bankruptcy proceedings which commenced even before the interim stay order was granted. As such, the renewal of the BN must be considered as a continuation of the purpose originally designed. It was what the law offered as a genuine redress.

[8] There was no evidence of attempted service of the BN from the date of renewal until after the stay of execution order was granted. Further, the stay order was not effective until the sum of RM21,374.70 was paid into court and the plaintiff only paid the said sum into court about a month later. As the stay was not effective until this payment was made, the defendant was allowed to proceed with the service of the BN.

[8a] Without knowledge of when payment was made and the plaintiff's determination in not informing the defendant of this, the act of the defendant in serving the BN could not be considered as a means of obtaining some collateral advantage beyond what the law offered. Instead of avoiding any embarrassment on the service of the BN by informing the defendant of his payment into court, the plaintiff seemed purposefully minded to entrap the defendant into the pitfalls of the law.

[Plaintiff's claim dismissed with costs.]

Cases referred to:
Hermiman v. Smith [1938] AC 305 ***(refd)***
Hicks v. Faulkner [1878] 8 QBD 167 ***(refd)***
Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin b Ungku Mohamed [1998] 2 CLJ 340 ***(refd)***
Mitchell v. Jenkins [1833] SB & Ad 588 ***(refd)***
Quartz Hill Gold Mining Company v. Eyre [1883] 11 QBD 674 ***(refd)***
Williams v. Spautz 107 ALR 635 ***(refd)***

Other source referred to:
Halsbury's Laws of England, 4th edn, vol 45, paras 1340, 1372

For the plaintiff - A Murali; M/s Vijendran & Co
For the defendant - Ponmugam; M/s Ponmugam & Co

Reported by Usha Thiagarajah

JUDGMENT

James Foong J:

The Plaintiff's Claim

The plaintiff's cause of action against the defendants is:

(a) malicious prosecution; and

(b) abuse of process.

He claims to have suffered damages as a result.

The Chronology Of Events

In order to understand this claim, it is necessary for me, at the outset, to set out the chronology of events.

The plaintiff is an advocate and solicitor practising under the name and style of M/s Vije & Company at the material time. He was a customer of the defendants, who are and were at the material time bankers. There were two banking accounts operated by the plaintiff: a personal account and an office account. In 1983, the plaintiff enjoyed a clean overdraft facility of up to RM20,000 on his personal account. However in 1989, the defendants insisted that he should apply for a secured loan to this account. Angered by this request, he forwarded to the defendants an application form for such a loan without much particulars, and his clerk as a guarantor. This was rejected by the defendants who then recalled the clean overdraft facility. A demand was then made by the defendants on the plaintiff for RM19,865.42. The plaintiff attempted to settle this by installments but the defendants claim that this was rejected though the plaintiff insists otherwise. For these harsh and arbitrary actions, the plaintiff complained to the defendants' higher-ups of the actions of one Kenneth Pillay, the defendants' manager managering the plaintiff's account at that time.

On 20 October 1989, the defendants filed a civil action in the magistrate court claiming the sum demanded together with interest and costs. When the summons was served, the plaintiff entered appearance. The plaintiff then contends that he was negotiating with the defendants' solicitors to settle this case; thus no defence was filed, but contrary to what was agreed, the defendants' solicitors obtained judgment in default of defence (default judgment) against him on 16 April 1990. The defendants deny this.

The plaintiff immediately applied to set aside this default judgment. While his application was pending, the plaintiff alleges that his counsel, who is also his brother, has entered into settlement with the defendants' solicitor, one Ms. Kuna. This was to pay up the sum of RM19,865.42 by six instalments commencing from 15 February 1991. According to the plaintiff this was agreed to by the defendants. However this again is denied by the defendants.

Though insisting that there was a settlement concluded, the plaintiff did not comply with the terms to pay within the purported agreed time. One year after the default judgment, the defendants sent to the plaintiff a letter of demand for a sum of RM25,554 which included interest and costs calculated to the date of the letter. Also inserted in this letter is a paragraph which advised that if no payment is received bankruptcy proceedings will commence.

Upon receipt of this letter on 29 April 1991, the plaintiff claims that he panicked; frightened and afraid of the impending bankruptcy proceedings which may affect his reputation. Despite such emotional reactions, the plaintiff only paid RM19,865.42 instead of the total sum so demanded in the said letter. This payment by way of a cheque was however returned to the plaintiff by the defendants' solicitors as being unacceptable.

In the meantime, the plaintiff's application to set aside the default judgment was dismissed by the magistrate on 12 March 1991. Against this, the plaintiff filed an appeal to the High Court.

On 17 May 1991, the defendants commenced bankruptcy proceedings against the plaintiff by securing a bankruptcy notice. Unable to serve the bankruptcy notice personally on the plaintiff, the defendants' solicitors on 29 May 1991 sent a letter of appointment to the plaintiff to serve this notice on the plaintiff personally, and if they fail to succeed, an application for substituted service by way of advertisement in seven named national newspapers was contemplated.

The plaintiff, realising the urgency of this matter, applied to the Sessions Court to set aside the bankruptcy notice. This was dismissed for want of jurisdiction. Instead of applying to the High Court to set aside the bankruptcy notice, the plaintiff obtained an *ex parte* order for stay of execution on the default judgment. This interim order was granted on 24 July 1991 and was to last till 5 September 1991 where the *inter parte* application of the plaintiff to stay execution will be heard. While this interim order was in force, the defendants on 10 August 1991, renewed the validity of the bankruptcy notice which had expired.

On 5 September 1991, the plaintiff's application for stay of the default judgment was argued *inter parte* before the High Court judge who then granted a stay of execution order on the default judgment on the following conditions:

(1) that the plaintiff pay into court the sum of RM21,374.70 and thereafter;

(2) until the application for the setting aside of the default judgment is decided.

Without informing the defendants, the plaintiff on 7 October 1991 paid into court a sum of RM21,374.70. The defendants became aware of this on 29 November 1991. By this time, the defendants had on 22 October 1991 served the bankruptcy notice on the plaintiff.

In the meantime, the plaintiff's appeal against the decision of the magistrate refusing to set aside the default judgment was dismissed by the High Court on 25 February 1995. Still dissatisfied, the plaintiff obtained leave from the Court of Appeal to file an appeal against the High Court decision. In the meantime, the defendants have obtained leave from the court to withdraw the sum of RM21,374.70 paid in by the plaintiff. As for the bankruptcy proceedings, no further action was taken by the defendants thereafter.

Against this backdrop, the plaintiff is attempting to prove his two causes of action.

Causes Of Action, Principles And Analysis

As the plaintiff has submitted that he is relying on the causes of action of: malicious prosecution and an abuse of process to justify his claim, I shall now consider each of them separately, beginning with malicious prosecution followed by the abuse of process.

Malicious Prosecution

Definition

In para. 1340 of Vol. 45, 4th edn, of *Halsbury's Laws of England*, malicious prosecution is defined as:

> an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. To be actionable as a tort the process must have been without reasonable and probable cause, must have been instituted or carried on maliciously and must have terminated in the plaintiff's favour. The plaintiff must also prove damage.

But from the facts of this case, since there is no criminal charge ever set in motion, I think that the plaintiff is more set in basing his action under: malicious institution of bankruptcy. This, according to *Halsbury's Laws of England*, 4th edn, vol. 45, para. 1372 is elaborated as:

> An action lies in respect of injury to reputation caused by maliciously and without reasonable and probable cause commencing bankruptcy proceedings against an individual or winding up proceedings against the company provided that the proceedings terminated favourably to the plaintiffs.

Legal Principles

Here, the necessary elements to prove such action are:

(1) The bankruptcy or winding up proceedings has commenced and terminated in favour of the plaintiffs.

(2) There is malice.

(3) There is an absence of reasonable and probable cause.

(4) There must be damages suffered.

For the last ingredient, the Court of Appeal of England in *Quartz Hill Gold Mining Company v. Eyre* [1883] 11 QBD 674 declared that injury to "a man's fair fame and credit" brought about by the defendants' action against the plaintiff for bankruptcy or winding up is sufficient damage in a claim of this nature.

As for what is: reasonable and probable cause, the House of Lords in *Hermiman v. Smith* [1938] AC 305 has adopted Hawkins J definition pronounced in *Hicks v. Faulkner* [1878] 8 QBD 167 which is as follows:

> An honest belief in the guilt of the accused based on full conviction, founded upon reasonable grounds, of the existence or the state of circumstances which, assuming them to be true would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.

Then in respect of malice Parke B in *Mitchell v. Jenkins* [1833] SB & Ad 588 @ 598 is of the view that:

> The term malice in this form of action is not to be considered in the sense of spite or hatred against an individual, but *malus animus*, and as denoting that the party is actuated by improper and indirect motives.

Analysis

Bankruptcy proceedings in this case was commenced by the defendants against the plaintiff. The defendants assert that this was based on the plaintiff's failure to satisfy the judgment sum in the default judgment. But essential for determination in this cause of action for malicious institution of bankruptcy in the present situation is whether: the bankruptcy proceedings has terminated in favour of the plaintiff? The plaintiff argued that it has when the orders for the stay of execution was granted, especially that dated 5 September 1991. This was then followed by the plaintiff's claim that the sum of RM21,374.40 so deposited by him under this stay order was taken out by the defendants. The defendants dispute this. They claim that the bankruptcy proceedings was not proceeded further than the bankruptcy notice, and subsequent to the *inter parte* order of stay of execution was granted, they proceeded no further; there

was never any petition for bankruptcy filed against the plaintiff. For this, there was never any determination by the bankruptcy court in favour of the plaintiff.

I agree with the view of the defendants, bankruptcy proceedings is under the jurisdiction of the bankruptcy court, of which the High Court carries out its functions. When the bankruptcy notice was obtained by the defendants, the plaintiff attempted to strike it out. Instead of applying to the High Court, the plaintiff applied to the subordinate court. Inevitably he failed for want of jurisdiction. He never approached the bankruptcy court again. Instead he applied to the High Court to stay execution on the default judgment. Indirectly when this application of his was granted, proceedings in the bankruptcy court should be stayed. Though stayed it was never ever litigated upon. And when no petition for bankruptcy was taken out with the lapse of the validity of the bankruptcy notice, this process was terminated by effluence of time. As for taking of money out from the court by the plaintiff, it is connected with the default judgment process and not directly associated with bankruptcy proceedings. In such an event the bankruptcy process cannot be considered as being terminated in favour of the plaintiff. If there is any termination in favour of the plaintiff, the bankruptcy process must be litigated, which in the circumstances of this case should be during an application to set aside the bankruptcy notice, or if ever a petition for bankruptcy was filed, the dismissal thereof. None of these ever happened. By these reasons, I find that the plaintiff has failed to satisfy this court of the first element to succeed in an action for malicious bankruptcy.

As for the other elements, I do not intend to proceed to analyse them here, except to say that for malice and absence of reasonable and probable cause factors I also find these not being proved. These are based on my detailed consideration of all material allegations of the plaintiff under the cause of action for abuse of process.

Abuse Of Civil Process

Ingredients

Abuse of civil process is an actionable tort. In Malaysia, this has recently been confirmed in *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin b. Ungku Mohamed* [1988] 2 CLJ 340; [1998] 2 AMR 1666. For such an action to succeed, Gopal Sri Ram JCA sets out the three essential elements to be fulfilled:

(1) The process complained of must have been initiated;

(2) The purpose for initiating that process must be some purpose other than to obtain genuine redress which the process offers. In other words, the dominant purpose for which the process was invoked must be collateral, that is to say, aimed at producing a result not intended by the invocation of the process;

(3) The plaintiff must have suffered damage or injury in consequence.

It is to be stressed that neither malice nor terminations of the proceedings in the plaintiff's favour are necessary elements of the tort.

The quintessential of this cause of action is found in the quoted passage of the Australian High Court decision of *Williams v. Spautz* 107 ALR 635 accepted in the judgment of *Malaysia Building Society Bhd* case which is:

Central to the tort of abuse of process is the requirement that the party who has initiated proceedings has done so for a purpose or to effect an object beyond that which the legal process offers ....

It is otherwise when the purpose of bringing the proceedings is not to prosecute them to a conclusion but to use them as a means of obtaining some advantage for which they are not designed (*Re Majory* [1955] Ch 600 at 623-4) or some collateral advantage beyond what the law offers (*Goldsmith v. Sperrings Ltd* [1977] 1 WLR at 498-9; see also *Varawa* [1911] 13 CLR at 91) ....

Analysis

In determining whether the plaintiff can succeed under this cause of action I discovered that by the nature of the plaintiff's claim and the testimonies adduced to support it, there is basically two legal process instituted by the defendants; the first being: the civil action in the magistrate court leading to the default judgment; and the second is: the institution of the bankruptcy proceedings. I shall initially deal with the former followed by the latter.

Legal Action In The Magistrate Court

Indeed the defendants have commenced an action in the magistrate court to recover the sum RM19,865.42 together with interest and costs. But, did they do this for some other purpose other than to obtain genuine redress which the process offers? To determine this, I shall proceed to examine the material allegations of the plaintiff that the defendants did not.

The first is the plaintiff's claim that the defendants' manager, one Kenneth Pillay was angry with him and wished to retaliate by filing this action because of the plaintiff's complaint to Pillay's superior over the withdrawal of the plaintiff's overdraft facility. I certainly do not find any merits in this assertion.

The overdraft facility granted to the plaintiff's personal account was of a temporary nature. It could be withdrawn and the defendants did exactly this. And when the plaintiff failed to satisfy the defendants' demand for repayment of this loan, the defendants have every right to institute legal action to recover the same. This they did, and their action was a genuine redress which the process offered. I cannot find any other purpose besides this.

The next claim of the plaintiff is that the default judgment should not have been obtained by the defendants when there was a negotiation for settlement. I find this difficult to comprehend. Under the legal process, when defence is not filed, the party bringing the action has the right to enter judgment in default. The aggrieved party can apply to set it aside if the court can be convinced there was indeed an arrangement to settle. In this case, the defendants denied any settlement reached. Two courts of law (the magistrate court and the High Court) had decided on this issue which is against the plaintiff. I do not intend to join in to alter the numbers particularly when the appeal to the Court of Appeal on this matter is pending except to say that on record, as of today, the plaintiff has not been able to prove that there was a negotiation pending to succeed in his application to set aside the default judgment. This being the case, I can see no other purpose in bringing this action except the desire of the defendants to recover their loan to the plaintiff.

The Initiation Of The Bankruptcy Proceedings

The plaintiff insists that the defendants had agreed to allow him to pay a sum of RM19,865.42 by six instalments, the first to commence on 8 February 1989 after the default judgment was obtained. He paid this sum by way of a cheque on 29 April 1991, the day he received a threatening letter from the defendants that bankruptcy proceedings will be instituted if the judgment sum is not settled; despite this, the defendants returned this cheque and proceeded to institute bankruptcy proceedings. For this, the plaintiff insists that there was a collateral purpose to damage his reputation. To support this contention of an agreement having been reached, the plaintiff desired to tender a letter written by him to the defendants solicitors. It is marked "without prejudice". The defendants objected to its admissibility. I had it marked as ID (ID1) for identification and announced that I will give my decision at the end of trial.

After perusing this letter and considering the arguments of both parties, I am rejecting the admissibility of this document as an exhibit. The following are my reasons:

(1) I do not accept the plaintiff's explanation that the term "without prejudice" was loosely inserted on this document. The plaintiff is not a layman. He is and was at the material time of writing this letter a qualified advocate

and solicitor of considerable number of years standing. Surely, he was aware of the full implication of this phrase when used.

(2) At the lower part of this letter there is written: "acknowledged without prejudice on 7 February 1991 at 10.10 a.m." and signed by the defendants' solicitors. This indicates that the defendants have to confirm the contents therein. There is yet to be a common consensus reached to imply acceptance of what is arbitrary uttered in the letter.

The plaintiff's second witness, PW2, his brother testified that he was the plaintiff's counsel in the setting aside of the default judgment's application, and that in the course of doing so, he had negotiated with one Ms Kuna to settle this case in accordance with the terms listed in ID1. He then affirmed that Ms. Kuna agreed to this. Ms. Kuna was called and she denied such settlement. I believe her testimony. If the matter was ever settled in accordance with those alleged terms, why did the plaintiff not pay any of the installments agreed upon according to the time stipulated? It was only when the defendants wrote a letter of demand for the judgment sum to be paid that the plaintiff started to respond. And even when he tried to pay this sum on 29 April 1995, there was no mention of the settlement and that the amount tendered was in payment thereof. Instead, the plaintiff talked about the difference between RM19,865.42 and the judgment sum to be settled depending on the appeal of the application to set aside the default judgment. This gives no indication of any prior settlement having been reached. If there had been such an arrangement, the plaintiff would just pay RM19,865.42 without any need to refer to the balance, since there was none.

The plaintiff's next allegation relates to the mode and manner of the service and renewal of the bankruptcy notice affected on him. By such actions of the defendants, he claims the existence of a collateral purpose beyond that the legal process offers.

The first concerns a letter written by the defendants' solicitors on 29 May 1991 to the plaintiff informing the plaintiff of a date of appointment to serve the bankruptcy notice. In the last paragraph of this letter, the defendants' solicitors advised that if: this notice is not served, then service will be affected through a number of newspapers, totalling seven, so named therein. This, the plaintiff claims was an extortion.

I cannot agree with this view of the plaintiff. A bankruptcy notice needs to be served personally on the person so named in the notice. When personal service fails, application by way of substituted service is permitted by the rules of court. Before one can proceed with this approach, a letter of appointment is required to be sent to the person which service is intended. It is not unusual

in such a letter of appointment to advise on the compliance of the appointment to avoid the embarrassment of a substituted service which can take the form of publication in newspapers. This is not a threat, but a fact that can materialise. As to the number of newspapers, the defendants named seven, but this is left to the court granting such application for substituted service to decide on the number in accordance with the law. I do not feel that naming of the seven newspapers for the considered substitute service was an extortion. The objective of the defendants' solicitors were to effect personal service and they strongly advised the plaintiff to meet the appointment.

To discourage the plaintiff from negating the appointment they let known the consequences. The number of newspapers is immaterial but the right to advertise in a daily is permissible by law. This cannot be considered as a purpose to compel the plaintiff to settle the judgment sum lawfully due to the defendants under the default judgment.

The next assertion of the plaintiff is that the defendants process server, in attempting to serve the bankruptcy notice on him, has "parked himself at the corridors of my (his) office to serve the notice on me (him)" and had walked in and out of his office to embarrass his staff and clients. In my opinion, even if these allegations were true, it could have been easily avoided if the plaintiff had accepted service personally. Though the plaintiff insists that he was not avoiding service, the events recorded by documentary evidence speak otherwise. In fact, the plaintiff himself has admitted that he did not wish to satisfy the sum claimed in the bankruptcy notice for fear that this would jeapordise his application to set aside the default judgment. With such attitude, obviously he was trying to evade service, and when this happens, no blame can be attributed to process server in waiting for him outside his office to serve the process on him. As for the claim that the process server was in and out of his office, again, I reiterate that the process server had a right to carry out his job by visiting the office of the plaintiff to ascertain whether the plaintiff was there to receive the bankruptcy notice. This is not unlawful and cannot be considered as an implication of the existence of some other purpose other than that legally designed for.

The third accusation of the plaintiff is on the commencement of the bankruptcy proceedings itself. According to him, this move was employed by the defendants to defeat his application to set aside the default judgment. If the sum as claimed in the bankruptcy proceedings was paid then his application to set aside the default judgment when successful would be nugatory.

I am surprised with this claim. The plaintiff speaks as if the default judgment will certainly be set aside. As revealed by both the magistrate court and the High Court decisions, it was the reverse. In any event, a judgment stands as a good judgment until set aside. When a judgment sum is not paid then execution can be enforced. This can take the form of a bankruptcy proceeding, as is the case here. I see no sinister reason for this approach adopted by the defendants.

Continuing, the plaintiff next laments on the defendants' renewal of the validity of the bankruptcy notice on 10 August 1991 when the interim stay of execution order was granted on 24 July 1991. I agree that this may be a breach of the interim stay order but I cannot accept that this was done with the purpose other than to obtain a genuine redress which the process offers. The redress in this circumstances is the bankruptcy proceedings. This was commenced even before the interim stay order was obtained. Since, I have thus far considered the commencement of the bankruptcy proceedings was not designed for some collateral advantage beyond what the law offers, the renewal of the bankruptcy notice must be considered as continuation of the purpose originally designed; it was what the law offers as a genuine redress.

The final complaint of the plaintiff points towards the attempted service and finally the successful service of the bankruptcy notice on the plaintiff after the *inter parte* stay of execution order was granted on 5 September 1991.

It must be noted that though the bankruptcy notice was renewed, there is no evidence of attempted service of this notice from date of renewal on the plaintiff until after 5 September 1991. The defendants pointed out that they can resume service because this stay order of 5 September 1991 was on condition upon the plaintiff paying into court a sum of RM21,374.70. When they attempted service of bankruptcy process on the plaintiff and the final service of it on him, they were not aware that the plaintiff had paid the money into court to effectuate the stay order.

I do not view the defendants' action of the service of the bankruptcy notice at this stage an implication of some other collateral purpose. A large degree of blame for the occurrence of this set of events is, in my opinion, due to the plaintiff's own doing. Though the stay order was granted on 5 September 1991, it was only about a month later, on 4 October 1991, that the plaintiff paid the sum of RM21,374.70 into court. As the stay was upon condition of this payment, I agree with the defendants' contention that the stay was not effective until this payment; they were, thus, allowed to proceed with the service of the bankruptcy notice. On top of this, payment of the money into court was not made known to the defendants. They did not become aware of

this until November 1991; by which time, the bankruptcy notice was served. When questioned as to why he did not inform the defendants of his payment into court, the plaintiff replied: " I do no see the need to inform them as they were present at the hearing (when the *inter parte* stay order was made)." Though the defendants were present, but the issue is on the time of payment. Without knowledge as to when payment was made, and the plaintiff's determination in not informing the defendants of this, the act of the defendants in serving the bankruptcy notice cannot be considered as a means of obtaining some collateral advantage beyond what the law offers. On the contrary, this particular episode speaks poorly of the plaintiff. Instead of avoiding any embarrassment on the service of the bankruptcy notice by informing the defendants of his payment into court he seems purposefully minded to entrap the defendants into the pitfalls of the law. If there is any other purpose for bringing this abuse of process suit other than by lawful process, to my mind, it is found to be on the part of the plaintiff rather than the defendants.

Conclusion

By reasons aforesaid, I hereby dismiss the plaintiff's claim with costs.

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